

E-FILING

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Daniel L. Casas, Esq. (SBN 116528)
Martin H.Q. Nguyen, Esq. (SBN 234127)
CASAS RILEY & SIMONIAN, LLP
One First Street, Suite 2
Los Altos, CA 94022
(650) 948-7200
(650) 948-7220 FAX

Attorneys for Plaintiff
DAVID NANCE

Filed
MAR 14 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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for per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID M. NANCE,

Plaintiff,

v.

GEORGE SHENG, and PEACE
ELECTRONICS, INC., and DOES 1-20,

Defendants.

Case No.

C08 01450

**COMPLAINT FOR PATENT
INFRINGEMENT**

MEJ

DEMAND FOR JURY TRIAL

Plaintiff David Nance ("Nance") demands a jury trial on all issues and alleges as follows:

I. JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. 271 and 281. This Court has subject matter jurisdiction over the matters complained of under 28 U.S.C. 1338(a) and 1331.

2. On information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. 1400(b) and 1391(c), as defendants George Sheng ("Sheng") and Peace Electronics, Inc.

1 ("Peace") reside, have a regular place of business, and have committed acts of patent
2 infringement in this judicial district.

3 **II. INTRADISTRICT ASSIGNMENT**

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5 3. Pursuant to Civil Local Rule 3-2(e), assignment to the San Jose Division of the U.S.
6 District Court for the Northern District of California is appropriate in that Nance's principal place
7 of business is in, and a substantial part of the events and damages giving rise to this action
8 occurred in the County of Santa Clara.

9 **III. THE PARTIES**

10 4. Nance is a United States citizen and individual inventor residing in the County of Santa
11 Clara, State of California.

12 5. On information and belief, Sheng is an individual currently residing in the Northern
13 District of California. On information and belief, Sheng is an entrepreneur and an officer,
14 director, or manager of Defendant Peace Electronics, Inc.

15 6. On information and belief, Peace is a corporation organized, existing, and currently
16 suspended under the laws of the State of California. Peace is an importer and wholesaler of
17 consumer electronics, golf products, household items, and other goods. On information and
18 belief, Peace has a principal place of business in Brentwood, California.

19 **IV. FACTUAL BACKGROUND**

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21 7. Plaintiff Nance is an individual with a penchant for contemporary hairstyle and fashion.
22 Nance additionally has interests in sporting activities, including golf. Nance combines his
23 interests in sports and fashion to design products that complement contemporary trends.

24 8. Nance's product line includes, among others, an integrated hairpiece and visor.

25 9. On May 27, 2006 and May 28, 2006, the City of Morgan Hill promoted and hosted an
26 annual festival known as the Mushroom Mardi Gras to celebrate the area's agricultural
27 penchant and provide a venue for area vendors to display food, arts and crafts, and other
28

1 goods for sale. Nance operated a vendor booth at the Mushroom Mardi Gras Fair for display
2 of his integrated hairpiece and visor. The visor attracted a great deal of attention and foot
3 traffic from passers-by and festival attendees.

4 10. On each day of the festival, Defendant Sheng operated a vendor booth for the sale of
5 golf products adjacent to Nance's booth. Due in part to the overwhelming market success of
6 Nance's visor at the festival, Sheng quickly realized that Nance's visor was a highly attractive
7 product. Sheng solicited Nance's participation in a commercial affiliation for the sale of
8 Nance's visor. In particular, Sheng invited Nance to share a booth at an upcoming exposition
9 for vendors of golf products to coordinate selling of their individual products. Nance
10 immediately and unequivocally declined. As a courtesy, Nance gave Sheng a visor without
11 any exchange of consideration.

12 11. On information and belief, Sheng engaged the corporate resources of Peace for the
13 manufacture, sale, and distribution of visors identical to the visor provided by Nance to Sheng
14 at the festival.

15 12. On information and belief, Sheng and Peace have made, used, offered to sell and sold,
16 and continues to make, use, offer to sell and sell, a visor which Sheng refers to by various
17 product names, including Hairy Visor or Hairy Club Visor.

18 13. When Nance discovered that Sheng and Peace were manufacturing Nance's visor,
19 Nance gave multiple written demands that Sheng cease and desist sales of Nance's visor.
20 Sheng ignored or disregarded all such demands. At no time did Sheng request or solicit a
21 license related to Nance's visor.

22 14. On information and belief, Sheng and Peace are taking the calculated risk of
23 incorporating what they know to be Nance's patented visor into a visor marketed by Sheng in
24 order to stimulate sales at Peace and respond to the intense market and financial community
25 pressure to remain competitive and demonstrate continued growth.

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**FIRST CAUSE OF ACTION
(Infringement of the '747 Patent)
(35 U.S.C. § 271)**

15. Nance incorporates the allegations of paragraphs 1-14 above.

16. On December 18, 2007, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. D55747 ("the '747 Patent"), entitled VISOR, to David M. Nance. Nance is the owner of all right, title and interest in the '747 Patent. A copy of the '747 Patent is attached to the Complaint as **Exhibit A**.

17. On information and belief, Sheng and Peace have been, and currently are, directly and indirectly infringing the '747 Patent by making, using, marketing, selling, reselling, offering for sale, and/or inducing others to use, headwear including, without limitation, Hairy Visor and Hairy Club Visor.

18. On information and belief, Sheng and Peace have had actual and constructive knowledge of the '747 Patent and the application thereto since at least January 30, 2007, and Sheng's and Peace's infringement of the '747 Patent have been willful, and will continue unless enjoined by this court. Pursuant to 35 U.S.C. § 283, Nance is entitled to a permanent injunction against further infringement.

19. As a direct and proximate consequence of the infringement of the '747 Patent by Sheng and Peace, Nance has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Nance is entitled to relief. Pursuant to 35 U.S.C. § 284, Nance is entitled to damages for infringement and treble damages.

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V. PRAYER FOR RELIEF

WHEREFORE, Nance prays for judgment against defendants Sheng and Peace as follows:

1. For a judicial determination and declaration that the '747 patent is valid and enforceable;
2. For a judicial determination and declaration that the '747 patent is infringed by Hairy Visor and Hairy Club Visor and such other products by Sheng and Peace as may infringe;
3. For a judicial determination and declaration that Sheng's and Peace's infringement of the '747 patent is willful;
4. For an order preliminarily and permanently enjoining Sheng and Peace, its officers, directors, shareholders, agents, servants, employees and attorneys, and all entities and individuals acting in concert with them or on their behalf, from infringing the '747 patent;
5. For damages according to proof, said damages to be trebled pursuant to 35 U.S.C. § 284 because of Sheng's and Peace's willful infringement;
6. For Nance's attorneys' fees and litigation costs pursuant to 35 U.S.C. § 285;
7. For an award of pre-judgment and post-judgment interest and costs to Plaintiff in accordance with 35 U.S.C. § 284; and
8. For such other and further relief as the Court may deem just and proper.

Dated: March 14, 2008

CASAS RILEY & SIMONIAN, LLP

By: 

Martin H.Q. Nguyen
Attorneys for Plaintiff
DAVID M. NANCE

VI. DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury of all issues triable by a jury.

Dated: March 14, 2008

CASAS RILEY & SIMONIAN, LLP

By: Martin H.Q. Nguyen
Martin H.Q. Nguyen
Attorneys for Plaintiff
DAVID M. NANCE



US00D557478S

(12) **United States Design Patent** (10) **Patent No.:** **US D557,478 S**
Nance (45) **Date of Patent:** **** Dec. 18, 2007**

(54) **VISOR**

(76) Inventor: **David M. Nance**, 42 Central Ave. #2,
 Los Gatos, CA (US) 95030

(**) Term: **14 Years**

(21) Appl. No.: **29/282,545**

(22) Filed: **Jul. 23, 2007**

Related U.S. Application Data

(63) Continuation of application No. 29/276,388, filed on
 Jan. 24, 2007, now abandoned.

(51) **LOC (8) Cl.** **02-03**

(52) **U.S. Cl.** **D2/876**

(58) **Field of Classification Search** **D2/865,**
D2/866, 871, 872, 873, 875, 876, 879, 882,
D2/884, 893; 2/65, 171, 171.1, 175.1, 183,
2/184, 195.1, 195.2, 195.3, 195.4, 200.1,
2/209.11, 209.12, 209.13, 209.3, 209.5, 209.7;
362/106

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

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 D302,484 S 8/1989 Egan
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FOREIGN PATENT DOCUMENTS

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OTHER PUBLICATIONS

Flair Hair Visor—Blond Hair as shown on www.flair-hair.com,
 viewed Jul. 2, 2007 (1 page).

Primary Examiner—Elizabeth A. Albert

Assistant Examiner—Karen E Eldridge Powers

(74) *Attorney, Agent, or Firm*—James F. Hann; Haynes
 Beffel & Wolfeld LLP

(57) **CLAIM**

The ornamental design for a visor, as shown and described.

DESCRIPTION

The Visor is used to cover a person's head and shade the
 person's eyes.

FIG. 1 is a front, right perspective view of a visor showing
 my new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a front elevation view thereof;

FIG. 4 is a right-sided elevational view thereof, the left side
 elevational view being a mirror image; and,

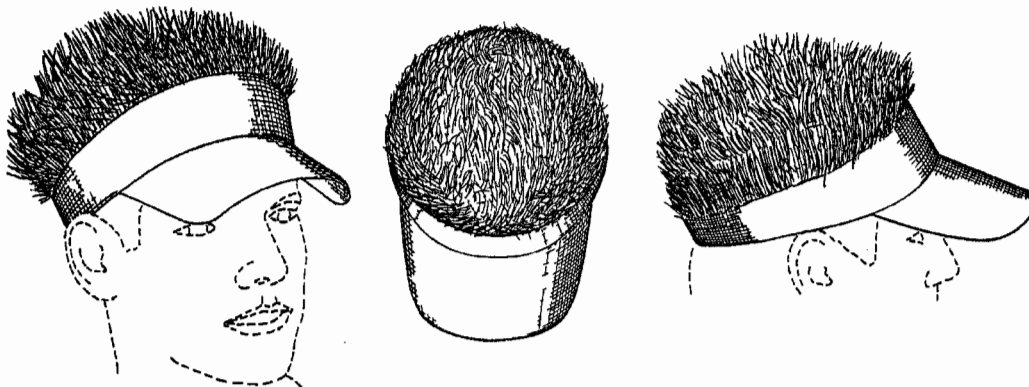
FIG. 5 is a back elevational view thereof.

The broken line showing of a person wearing the visor is for
 illustrative purposes only and forms no part of the claimed
 design.

The design consists partly of simulated hair. Inconsistencies
 between the way the simulated hair appears in the different
 views are understood to be caused by the variations in the
 organic material of the simulated hair, and to the different
 viewpoints from which the visor is shown. The minor
 variations from one view to another do not render the
 designs patentably distinct, but are due to the organic nature
 of the simulated hair.

The crosshatched pattern, although shown intermittently, is
 meant to represent fabric, and is understood to be distributed
 uniformly over the surfaces of the claimed design.

1 Claim, 3 Drawing Sheets



EXH A

U.S. Patent

Dec. 18, 2007

Sheet 1 of 3

US D557,478 S



FIG. 1

U.S. Patent

Dec. 18, 2007

Sheet 2 of 3

US D557,478 S

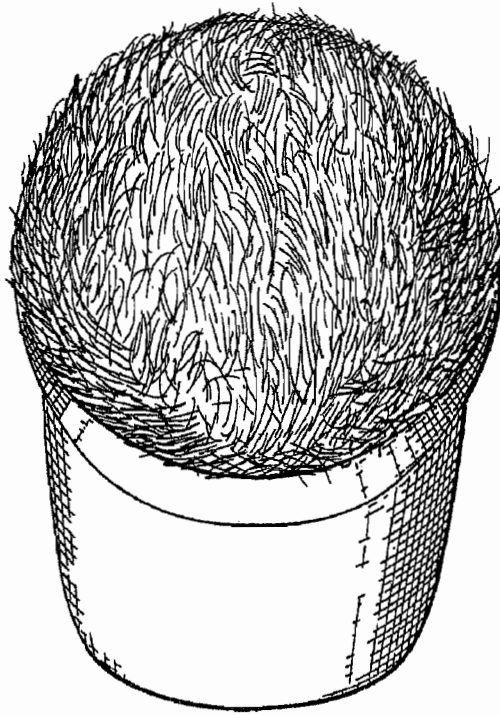


FIG. 2

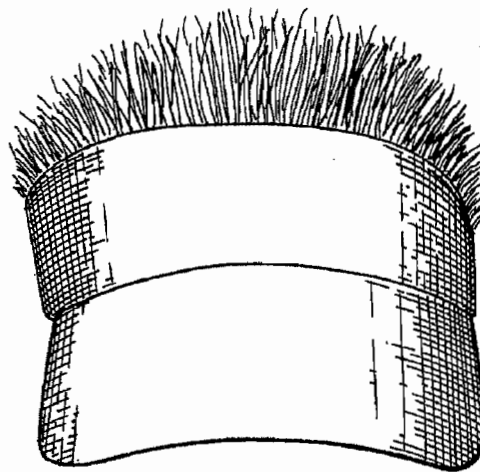


FIG. 3

U.S. Patent

Dec. 18, 2007

Sheet 3 of 3

US D557,478 S

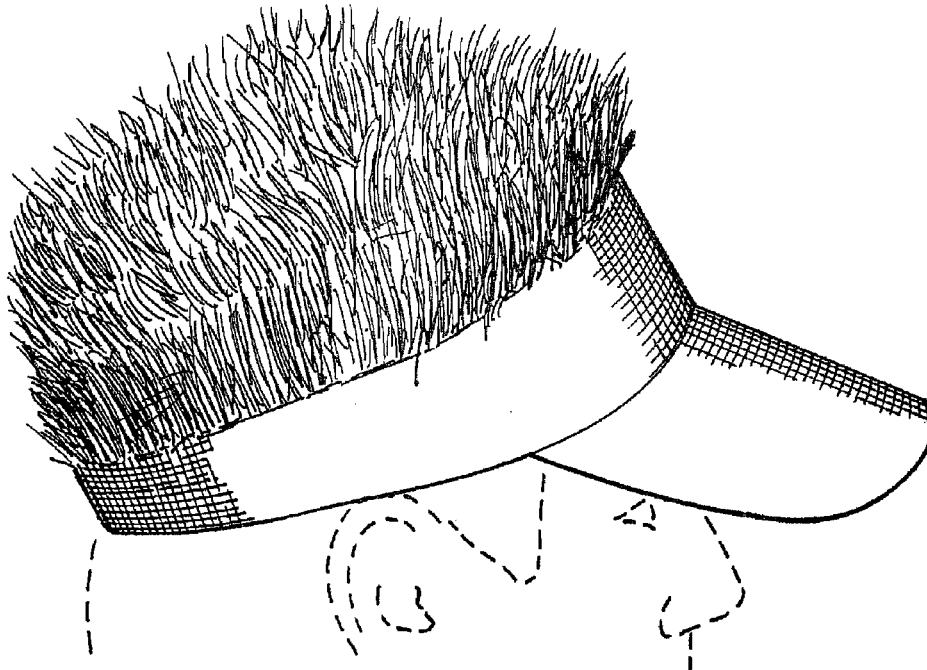


FIG. 4

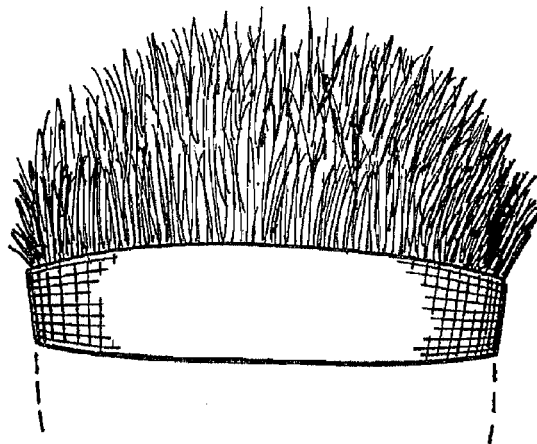


FIG. 5

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

DAVID M. NANCE

DEFENDANTS

GEORGE SHENG, PEACE ELECTRONICS, INC.

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel L. Casas, Esq.
Casas Riley & Simonian, LLP
One First Street, Suite 2
Los Altos, CA 94022

County of Residence of First Listed Defendant Alameda
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

C08 01450 ADR MEJ

E-FILING**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PTF 1 ☐ DEF 1
Citizen of Another State ☐ 2 ☐ 2
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
Incorporated or Principal Place of Business In This State ☐ PTF 4 ☐ DEF 4
Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. 271, 35 U.S.C. 281

Brief description of cause:

patent infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ According to Proof

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE
March 14, 2008

SIGNATURE OF ATTORNEY OF RECORD

Mark Ryan

Court Name: U.S. District Court, NDCA
Division: 5
Receipt Number: 54611002785
Cashier ID: waltonb
Transaction Date: 03/14/2008
Payer Name: Reynolds Casas and Riley LLP

CIVIL FILING FEE
For: David M. Nance
Case/Party: D-CAN-5-08-CV-001450-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3920
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

Case Assigned to MEJ

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.